

1 CELIA McGUINNESS, Esq. (SBN 159420)  
STEVEN L. DERBY, Esq. (SBN 148372)  
2 DERBY, McGUINNESS & GOLDSMITH, LLP  
300 Lakeside Drive, Suite 1000  
3 Oakland, CA 94612  
Telephone: (510) 987-8778  
4 Facsimile: (510) 359-4419  
info@dmglawfirm.com

5 Attorneys for Plaintiff  
6 GERARDO HERNANDEZ

7  
8 IN THE UNITED STATES DISTRICT COURT  
9 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 GERARDO HERNANDEZ,

11 Plaintiff,

12 v.

13 WING SING CHONG CO, INC., and  
14 INTELLIZ, INC.

15 Defendants.

CASE NO. 5:19-cv-03875 NC

Civil Rights

**SETTLEMENT AGREEMENT AND  
[PROPOSED] ORDER**

16  
17  
18  
19 Plaintiff GERARDO HERNANDEZ filed a Complaint in this action on July 3, 2019, to  
20 enforce provisions of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§  
21 12101 *et seq.*, and California civil rights laws and to obtain recovery of damages for  
22 discriminatory experiences, denial of access, and denial of civil rights against Defendants  
23 WING SING CHONG CO, INC., and INTELLIZ, INC., relating to disability discrimination at  
24 Defendants' public accommodations as of February 13, 2019, and continuing. Plaintiff has  
25 alleged that Defendants violated Titles II of the ADA and sections 51, 54, 54.1, and 54.3 of the  
26 California Civil Code by creating and/or failing to remove physical barriers to disability access  
27 at the Edible Arrangement store and related facilities located at 2706 to 2740 Middlefield  
28 Road, Palo Alto, California (hereinafter sometimes, "the property"). Without agreeing to the

1 truth of any of Plaintiff's allegations as set forth above or in the operative pleading in this  
2 matter, which allegations Defendant expressly denies, Plaintiff and Defendant WING SING  
3 CHONG CO, INC. (together, "the Parties") agree that it is in the Parties' best interests, and  
4 Plaintiff believes it is in the public interest, to fully and finally resolve the this matter on  
5 mutually agreeable terms without resort to protracted litigation. Therefore, Plaintiff and  
6 Defendant WING SING CHONG CO, INC., hereby agree and stipulate to the following  
7 Settlement Agreement, which the Court will retain jurisdiction to enforce for twelve months  
8 after the date it is signed.

9 WHEREFORE, the Parties to this Settlement Agreement hereby agree and stipulate to  
10 the Court's entry of this Order, which provide as follows:

11  
12 **JURISDICTION AND VENUE:**

- 13 1. The Court has jurisdiction of this matter pursuant to 28 U.S.C. §§1331 and 1345, and  
14 42 U.S.C. §12188(b). Venue is appropriate in this District pursuant to 28 U.S.C. §1391.  
15 2. This Order shall be a full, complete, and final disposition and settlement of Plaintiff's  
16 claims against Defendant WING SING CHONG CO, INC., (hereafter sometimes,  
17 "Defendant").  
18 3. Defendant acknowledges the Court's jurisdiction over it in this matter. The signing  
19 parties stipulate that Defendant is deemed to have appeared in this case and submitted  
20 itself to the jurisdiction of the Court; and that the Court has ongoing jurisdiction over it  
21 to make and enforce this Settlement Agreement and Order.

22 **REMEDATION:**

- 23 4. Defendant represents that it has remediated all the barriers at the site pursuant to the  
24 Certified Access Specialist Program ("CASp") report for the Restaurant dated  
25 September 9, 2019, updated January 29, 2020, and February 27, 2020, except for one  
26 barrier at page 11 of the report. The report is attached hereto and incorporated as  
27 **Exhibit A.** Defendant will remediate that barrier by April 30, 2020. Within fourteen  
28

1 days of remediating it, Defendant will provide Plaintiff through counsel photograph(s)  
2 sufficient to show that the barrier has been remediated.

3 5. Defendant shall maintain the accessible features in compliance with ADAS and the  
4 CBC.

5 6. On or before April 30, 2020, Defendant shall establish a written policy and promulgate  
6 it to its tenants at the property as follows: Tenants will not prop open their front doors  
7 during business hours, because doing so blocks the accessible path of travel. If tenants  
8 desire to prop open their doors during business hours, they must rehang the doors to  
9 open inward.

10 a. As each tenant lease at the property comes up for renewal, Defendant will  
11 incorporate this policy as a clause in the lease.

12 **DAMAGES AND ATTORNEY FEES:**

13 7. Defendant shall pay \$ 24,897.00 in full compensation of Plaintiff's damages, attorney  
14 fees, litigation expenses and costs. Payment shall be made by one check payable to the  
15 order of "Derby, McGuinness & Goldsmith, LLP, in Trust for Gerardo Hernandez" and  
16 shall be due in the office of Derby, McGuinness & Goldsmith, 300 Lakeside Dr,  
17 Oakland CA 94612, by close of business on March 31, 2020. The payment shall be  
18 allocated as \$4,000 for Plaintiff's damages and \$20,897.00 for Plaintiff's attorney fees,  
19 litigation expenses and costs.

20 **ENTIRE SETTLEMENT AGREEMENT AND ORDER:**

21 8. This Settlement Agreement and Order and **Exhibit A** constitute the entire agreement  
22 between the signing Parties regarding resolution of this dispute, and no other statement,  
23 promise, or agreement, either written or oral, made by any of the Parties or agents of  
24 any of the Parties that is not contained in this Settlement Agreement and Order, shall  
25 be enforceable regarding the matters of injunctive relief described herein.

26 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542:**  
27  
28

1 9. Each of the Parties to this Settlement Agreement and Order understands and agrees that  
2 there is a risk and possibility that, subsequent to the execution of this Settlement  
3 Agreement and Order, any or all of them will incur, suffer, or experience some further  
4 loss or damage with respect to the lawsuit that is unknown or unanticipated at the time  
5 this Settlement Agreement and Order is signed. Except for all obligations required in  
6 this Settlement Agreement and Order, the Parties intend that this Settlement Agreement  
7 and Order apply to all such further loss with respect to the lawsuit, except those caused  
8 by the Parties subsequent to the execution of this Settlement Agreement and Order.  
9 Therefore, except for all obligations required in this Settlement Agreement and Order,  
10 this Settlement Agreement and Order shall apply to and cover any and all claims,  
11 demands, actions, and causes of action by the Parties to this Settlement Agreement  
12 with respect to the lawsuit, whether the same are known, unknown, or hereafter  
13 discovered or ascertained, and the provisions of Section 1542 of the California Civil  
14 Code are hereby expressly waived. Section 1542 provides as follows:

15 **A GENERAL RELEASE DOES NOT EXTEND TO**  
16 **CLAIMS WHICH THE CREDITOR DOES NOT**  
17 **KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
18 **FAVOR AT THE TIME OF EXECUTING THE**  
**RELEASE, WHICH IF KNOWN BY HIM OR HER**  
**MUST HAVE MATERIALLY AFFECTED HIS**  
**SETTLEMENT WITH THE DEBTOR.**

19 10. Except for all obligations required in this Settlement Agreement and Order each of the  
20 Parties to this Settlement Agreement and Order, on behalf of each, their respective  
21 agents, representatives, predecessors, successors, heirs, partners, and assigns, releases  
22 and forever discharges each other Party and all officers, directors, shareholders,  
23 subsidiaries, joint venturers, stockholders, partners, parent companies, employees,  
24 agents, attorneys, insurance carriers, heirs, predecessors, and representatives of each  
25 other Party, from all claims, demands, actions, and causes of action of whatever kind or  
26 nature, presently known or unknown, arising out of the lawsuit.

1 11. If any provision of this Settlement Agreement is held by a court of competent jurisdiction  
2 to be void, voidable, unlawful or unenforceable for any reason, in whole or in part, the  
3 remaining portions of this Settlement Agreement will nevertheless continue with full force  
4 and effect, and the Parties agree a court of competent jurisdiction will have jurisdiction to  
5 reform such provision(s) to the extent necessary to cause it to give maximum legal effect to  
6 the intention of the Parties as expressed herein and the Parties agree to be bound by such  
7 reformation.

8 12. The Parties acknowledge that their respective attorneys have reviewed and drafted this  
9 Settlement Agreement, and the normal rule of construction to the effect that any  
10 ambiguities are to be resolved against the drafting Party shall not be employed in the  
11 interpretation of this Settlement Agreement.

12 13. This Settlement Agreement may be executed in counterparts, including electronic  
13 signatures and electronic copies such as PDFs, which, when counterparts have been  
14 executed by the Parties, shall constitute this Settlement Agreement.

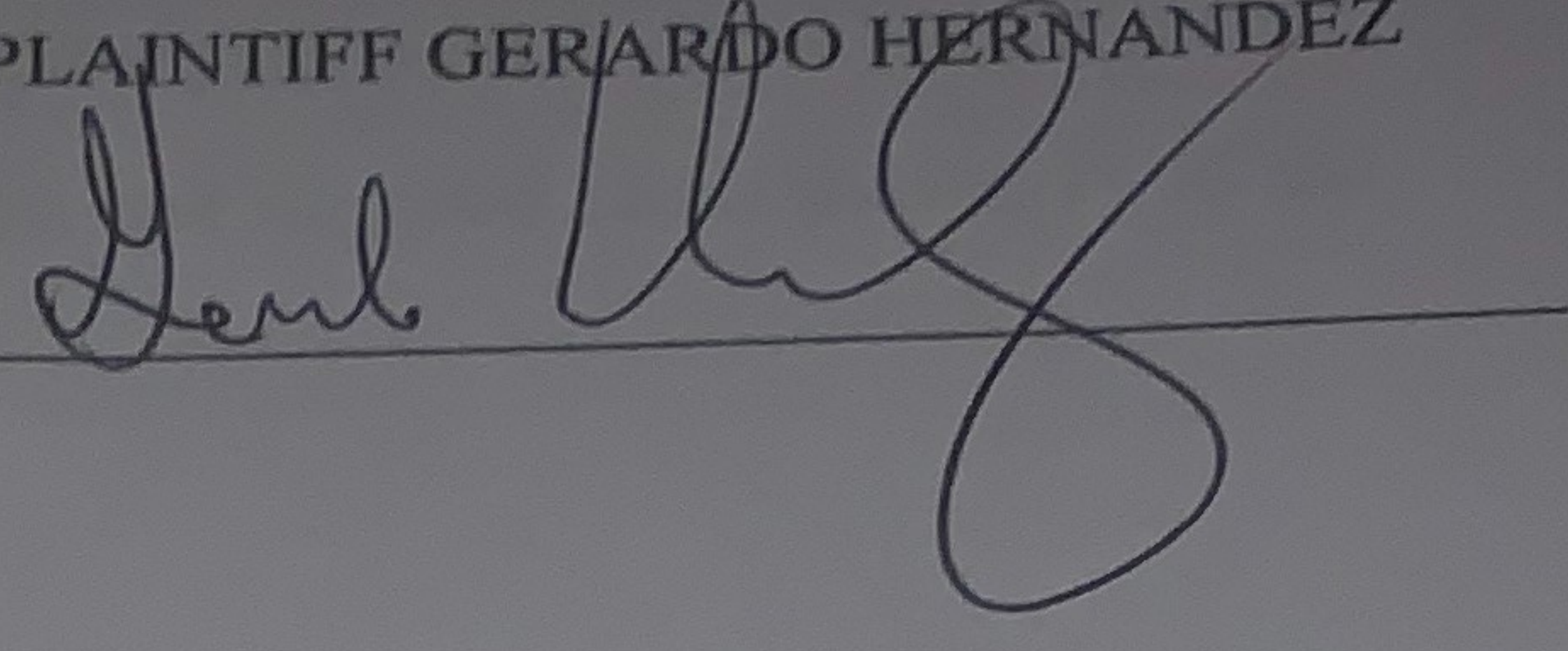
15 14. The individuals signing this Settlement Agreement represent that they are authorized to  
16 bind their respective Party to this Settlement Agreement.

17  
18 **END OF PAGE.**  
19 **SIGNATURES CONTINUE ON THE NEXT PAGE AND ORDER IS AT THE END OF**  
20 **THE DOCUMENT.**  
21  
22  
23  
24  
25  
26  
27  
28



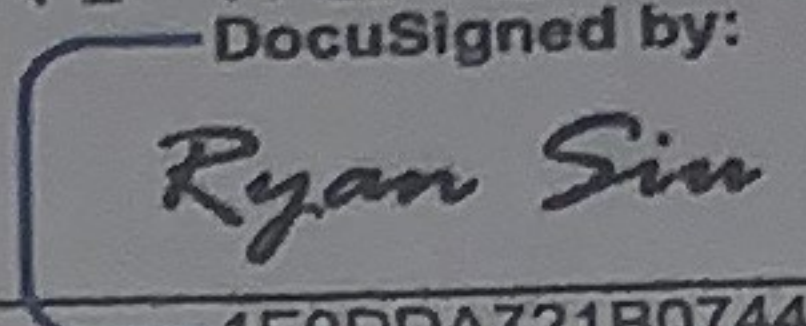
1 Dated: 3/16/, 2020

PLAINTIFF GERARDO HERNANDEZ



2  
3  
4  
5  
6 Dated: 3/16/2020, 2020

DEFENDANT WING SING CHONG CO, INC.

By:   
DocuSigned by:  
1E0DDA721B07445...  
Print name: Ryan Siu  
Title: CFO

11  
12 APPROVED AS TO FORM:

13 Dated: \_\_\_\_\_, 2020

DERBY, McGUINNESS & GOLDSMITH, LLP

15  
16  
17  
18 CELIA McGUINNESS  
Counsel for Plaintiff Gerardo Hernandez

19  
20  
21 Dated: \_\_\_\_\_, 2019

THE LAW OFFICES OF JERREY E. RYAN

22  
23  
24  
25  
26  
27  
28 JEFFREY E. RYAN  
Counsel for Defendant Wing Sing Chong Co., Inc.



1 Dated: \_\_\_\_\_, 2020

PLAINTIFF GERARDO HERNANDEZ

2  
3  
4  
5 Dated: 3/16/2020  
6 Dated: \_\_\_\_\_, 2020

DEFENDANT WING SING CHONG CO, INC.

7 By: Ryan Siu  
8 DocuSigned by:  
1E0DDA721B07445...

9 Print name: Ryan Siu

10 Title: CFO

11 APPROVED AS TO FORM:

12  
13 Dated: \_\_\_\_\_, 2020

DERBY, McGUINNESS & GOLDSMITH, LLP

14  
15  
16  
17 Dated: March 17, 2020  
18 \_\_\_\_\_, 2019

19  
20 CELIA McGUINNESS  
Counsel for Plaintiff Gerardo Hernandez

21 THE LAW OFFICES OF JERREY E. RYAN

22 Jeffrey E. Ryan  
23 JEFFREY E. RYAN  
24 Counsel for Defendant Wing Sing Chong Co., Inc.

25 //

26 //

27 //

28 //

//

//

1 Dated: \_\_\_\_\_, 2020

PLAINTIFF GERARDO HERNANDEZ

2

3

4

5

6 Dated: \_\_\_\_\_, 2020

DEFENDANT WING SING CHONG CO, INC.

7

By: \_\_\_\_\_

8

Print name: \_\_\_\_\_

9

Title: \_\_\_\_\_

10

11

12 APPROVED AS TO FORM:

13 Dated: March 15, 2020

DERBY, McGUINNESS & GOLDSMITH, LLP

14

15

  
\_\_\_\_\_

16

CELIA McGUINNESS

Counsel for Plaintiff Gerardo Hernandez

17

18 Dated: \_\_\_\_\_, 2019

THE LAW OFFICES OF JERREY E. RYAN

19

20

\_\_\_\_\_  
JEFFREY E. RYAN

Counsel for Defendant Wing Sing Chong Co., Inc.

21

//

22

//

23

//

24

//

25

//

26

27

//

28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

~~PROPOSED~~ ORDER

Pursuant to the stipulation of the parties, and for good cause shown, IT IS SO ORDERED.

DATED: 3/17/2020

  
\_\_\_\_\_  
Honorable Judge Nathanael Cousins  
U.S. District Court Magistrate Judge